



As provided in section 511.612 of title 5, Code of Federal Regulations, this decision constitutes a classification certificate that is mandatory and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the Government. The agency is responsible for reviewing its classification decisions for identical, similar, or related positions to ensure consistency with this decision. There is no right of further appeal. This decision is subject to discretionary review only under the conditions and time limits specified in title 5, Code of Federal Regulations, sections 511.605, 511.613, and 511.614, as cited in the *Introduction to the Position Classification Standards*, appendix 4, section G (address provided in appendix 4, section H).

**Decision sent to:**

[appellant]

[servicing personnel office]

[agency appeals office]

[agency personnel office]

## **Introduction**

On September 27, 2001, the Washington Oversight Division of the U.S. Office of Personnel Management (OPM) accepted a position classification appeal from [appellant], who is employed as an Information Release Specialist, GS-301-11, in the Inquiries Directorate of the Office of the Inspector General (OIG), [agency], in [city and State]. [Appellant] requested that her position be classified as Information Release Manager, GS-301-12. This appeal was accepted and decided under the provisions of section 5112 of title 5, United States Code.

An on-site position audit was conducted by a Washington Oversight Division representative on January 24, 2002, including an interview with the appellant's supervisor, [name]. This appeal was decided by considering the audit findings and all information of record furnished by the appellant and her agency, including her official position description, [number], and other material submitted in the agency administrative report on December 20, 2001.

## **General Issues**

To support her appeal, the appellant cited higher-graded positions engaged in similar work at other agencies. By law, we must classify positions solely by comparing their current duties and responsibilities to OPM standards and guidelines (5 U.S.C. 5106, 5107, and 5112). Since comparison to standards is the exclusive method for classifying positions, we cannot compare the appellant's position to others as a basis for deciding her appeal.

## **Position Information**

The appellant spends the majority of her time processing Freedom of Information Act (FOIA) requests for material contained in [agency] OIG investigative files and inspection reports. She independently determines what portions of the material are not releasable (e.g., sensitive [agency] information, privileged legal information, personal identifying information, or information that would constitute an unwarranted invasion of personal privacy), redacts those sections, and prepares the response to the requestor. She also processes all "official use" requests directed to the OIG, by redacting personal information covered under the Privacy Act. She is regarded as the [agency] expert on the FOIA as it relates to IG records, and regularly answers questions from field personnel on redaction issues. On an annual basis, she updates [agency] Instruction [number], "IG Records Release," and conducts bi-monthly briefings for new IG action officers on processing FOIA requests. Once or twice yearly, she conducts a two-day course on redaction procedures for field employees, and presents a session during the annual IG worldwide conference on the release of files and records under the FOIA. As a one-time project, she worked with a contractor in defining system requirements for an electronic FOIA system. She performs other related duties as the need arises, such as researching technical FOIA issues and assembling FOIA appeal packages for review by agency legal staff.

### **Series Determination**

The appellant's position is properly assigned to the Miscellaneous Administration and Program Series, GS-301, which covers nonprofessional, two-grade interval work for which no other series is appropriate. Neither the appellant nor the agency disagrees.

### **Grade Determination**

There are no published grade-level criteria for the GS-301 series. In such instances where specific criteria are not available for the work being evaluated, a standard addressing similar or related types of work is used.

The agency used the Administrative Analysis Grade Evaluation Guide (AAGEG) to evaluate the appellant's position. This guide is designed specifically to evaluate staff analytical, planning, and evaluative work. It relates primarily to the conduct of projects and studies to evaluate programs or develop improved management or administrative systems. Line work is excluded from coverage. As such, its applicability in evaluating the appellant's position is limited, given that she spends at least 60 percent of her time actually processing FOIA requests and the remainder on such related activities as answering questions from field personnel on the redaction of records, inputting information into a database, and conducting training. The work does not lend itself to the performance of the type of project-oriented evaluative work addressed in the AAGEG. Therefore, this guide can be used to evaluate the appellant's position only from a general standpoint, to the extent that corresponding factor levels within the various standards are based on common classification elements and thus have conceptually similar evaluation criteria. However, a direct comparison to the appellant's work under some of the factors cannot be made because the type of work covered by the AAGEG is too dissimilar in terms of the functions and activities performed.

For these reasons, we evaluated the position by application of the criteria contained in the position classification standard for the Paralegal Specialist Series, GS-950, dated August 1986. This standard addresses a variety of legal assistance work, such as analyzing the legal impact of legislative developments and administrative and judicial decisions, opinions, determinations, and rulings on agency programs; conducting research for the preparation of legal opinions on matters of interest to the agency; *performing substantive legal analysis of requests for information under provisions of various acts*; and other similar support functions which require discretion and independent judgment in the application of a specialized knowledge of laws, precedent decisions, regulations, agency policies and practices, and judicial or administrative proceedings. Paralegal specialist positions ordinarily encompass a greater variety of legal assistance duties, and consequently require more extensive knowledge of laws, legal precedents, and judicial proceedings, than are contained in the appellant's position. However, since this standard specifically addresses work related to the release of agency records, it provides criteria to which the appellant's duties can be directly compared.

The GS-950 standard is written in the Factor Evaluation System (FES) format, under which factor levels and accompanying point values are to be assigned for each of the following nine factors, with the total then being converted to a grade level by use of the grade conversion table

provided in the standard. The factor point values mark the lower end of the ranges for the indicated factor levels. For a position to warrant a given point value, it must be fully equivalent to the overall intent of the selected factor level description. If the position fails in any significant aspect to meet a particular factor level description, the point value for the next lower factor level must be assigned, unless the deficiency is balanced by an equally important aspect that meets a higher level.

In the classification standard for any given occupation, only the factor levels normally applicable to that work are described. For example, the types of work situations associated with the higher factor levels (such as Levels 1-8 and 2-5) may not ordinarily be found in certain occupations. This does not preclude assigning a higher factor level than described in the applicable standard to an individual position. However, the work being evaluated must *clearly exceed* the highest factor level description provided in the standard. In that case, another related standard that includes the higher factor level may then be referenced as a means of extending or extrapolating the grade level criteria for the corresponding factor. If the highest factor level described is *not* clearly exceeded, there is no basis for referencing another standard.

The GS-950 standard also includes benchmark job descriptions describing typical work situations in the occupation at various grade levels. These benchmarks include descriptions of the nine factors and the associated factor levels. They may be used to evaluate a position under the various factors if the duties described in the benchmark are similar to those being evaluated.

#### *Factor 1, Knowledge Required by the Position*

This factor measures the nature and extent of information an employee must understand in order to do the work, and the skills needed to apply that knowledge.

The knowledge requirements of the position are comparable to Level 1-7 (the highest level described under this factor). At that level, work requires in-depth knowledge of the application of various laws, court and/or administrative decisions and interpretations, regulations, and policies pertaining to the administration of particular types of legal cases and actions, and highly developed, specialized legal skills. This knowledge must be sufficient to perform such duties as analyzing and evaluating the relevance of particular technical evidence or questions and performing extensive and thorough legal research into legislative history, precedent cases, and decisions. Correspondingly, the appellant must have an in-depth knowledge of the application of the FOIA to OIG records, to be able to make independent judgments on the releasability of material and to advise others on such matters.

The standard includes a benchmark description for a GS-11 paralegal specialist with duties that match those performed by the appellant. The described position includes the following duties:

Examines and evaluates requests for information under the Freedom of Information and Privacy Acts; researches relevant legislation, regulations, and precedents; and determines if documents or segregable portions of them can be released. Substantiates rationale for position taken in case of appeal.

Reviews changes in regulations of the Freedom of Information and Privacy Acts and updates and advises other legal personnel and field staff of changes. Consults and assists in formulation of agency regulations regarding the release of information.

This benchmark description, under Factor 1, requires “knowledge concerning document control and security measures at the institutional level in order to insure against the release of any investigative information which would endanger pending prosecution, the orderly and safe operation of the institution, or endanger the lives or physical well-being of institutional staff.” Level 1-7 is assigned for that factor. The knowledge requirements of the appellant’s position are similar. She must have a thorough understanding of what material should be withheld in order to safeguard both individual privacy rights and [agency] security.

Level 1-7 is credited.

1250 points

### *Factor 2, Supervisory Controls*

This factor covers the nature and extent of direct or indirect controls exercised by the supervisor, the employee’s responsibility, and the review of completed work.

The level of responsibility under which the appellant works is consistent with Level 2-4 (the highest level described under this factor). At that level, the supervisor defines the objectives and scope of the work. The employee independently plans and carries out assignments and coordinates with agency legal staff and staff of other Federal or non-Federal activities. Completed work is reviewed only in terms of productivity and effectiveness in meeting requirements. This basically characterizes the type of supervision the appellant receives, in that she carries out her work virtually independently and is regarded as the OIG’s authority on information release under the FOIA. Although the supervisor signs all of her outgoing products, their technical sufficiency is assumed.

Level 2-4 is credited.

450 points

### *Factor 3, Guidelines*

This factor covers the nature of the guidelines used and the judgment needed to apply them.

The guidelines used by the appellant match Level 3-3. At that level, guidelines are available but not completely applicable. For example, many factual situations or issues may be encountered that do not appear to be the same as earlier situations, or the connection between the factual situation and the legal question is not clear. There are many related precedents that must be analyzed to determine which most nearly fit the situation, and the employee must use considerable judgment in interpreting and adapting guidelines to specific issues.

The appellant’s work is guided by [agency] regulations pertaining to the release of records under the FOIA, which specify the exemption criteria for withholding information. Since these criteria are generally stated, the appellant must discern their intent in making judgments as to what

specific information should be redacted, e.g., personal information that may indirectly serve to identify a particular individual.

The position does not meet Level 3-4. At that level, guidelines are limited to basic legislation, implementing regulations, and agency policies which must be analyzed for general application. The more specific guidelines typically applied at lower levels are of limited use as the legislative histories or precedent decisions are ambiguous or in conflict. The employee must interpret and apply guidelines and precedents in nonroutine situations and evaluate the applicability of guidelines on issues where conflicting decisions have not been resolved or where factual situations vary so widely that it is highly questionable which precedents may apply.

Although the appellant's work requires a good deal of judgment, its nature is not such that it involves resolving cases where conflicting legal precedents exist. The judgment is used in determining exactly what information should be redacted because it falls under one of the various exemption criteria. The extent of redaction required is based on considering whether prohibited information could be discerned or inferred from the release of certain other information. However, it is generally clear which of the exemption criteria may or may not apply in a given instance (e.g., it is not difficult to distinguish between information relating to [agency] security and that relating to individual privacy). In other words, the difficulty lies primarily in *applying* the guidelines, which is more indicative of Level 3-3, rather than in actually interpreting them or in determining which of several ambiguous or conflicting precedents are governing in a particular case.

Level 3-3 is credited.

275 points

#### *Factor 4, Complexity*

This factor covers the nature, number, variety, and intricacy of the tasks or processes in the work performed, the difficulty in identifying what needs to be done, and the difficulty and originality involved in performing the work.

The complexity of the appellant's work is comparable to Level 4-3. At that level, work includes varied duties involving different and unrelated processes and methods, such as case or issue analysis; legal research; interviewing claimants or potential witnesses; summarizing and explaining case files; and preparing exhibits. The employee must analyze the information, identify missing information that requires additional research or investigation, identify the appropriate reference source, and develop plans to complete the assignment. The employee must identify the legal or factual issues in the case, locate precedents, and develop a legally supportable conclusion.

Correspondingly, the appellant must carefully read through the material being requested under the FOIA, identify the information that should be withheld based on the intent of the various exemption criteria, and specifically identify the basis for denying the information.

The position does not meet Level 4-4. At that level, work involves varied duties encompassing diverse and complex technical issues or problems. Factual situations vary significantly from

assignment to assignment and are difficult to ascertain because there is a large body of interrelated facts to be analyzed, information from different sources is sometimes in conflict, only indirect evidence is available on some issues, and the interpretation of such evidence is disputed. The employee must reconcile conflicting policies and facts, identify and elicit additional information, and make a number of decisions at various stages such as identifying issues; defining the problem in terms compatible with the laws, policies, or regulations; interpreting considerable data; and weighing facts in order to formulate a legally and factually supportable conclusion.

This level requires a degree of analysis and evaluation that is not present in the appellant's position. The nature of the work is not such that it involves interpreting evidence, determining additional information needed, and formulating a legal position. The work is limited to redacting existing case material; the FOIA does not require that records be created or that the material be interpreted or explained. The appellant must locate the records that are specifically responsive to the FOIA request, rather than determining what additional information may be needed to suit a particular purpose. Although she must identify the FOIA exemption criteria under which a request is denied, appeals are referred to a legal staff who prepare the defense of the OIG decision.

Level 4-3 is credited.

150 points

*Factor 5, Scope and Effect*

This factor covers the relationship between the nature of the work, and the effect of the work products or services both within and outside the organization.

The scope and effect of the appellant's work match Level 5-4 (the highest level described under this factor). At that level, the purpose of the work is to advise other paralegal specialists or professional staff on highly specialized problems, monitor the consistency of case decisions throughout the agency, or research unsettled issues and develop proposed agency positions. The work provides the foundation for precedents that have a broad impact (e.g., affect aspects of agencywide programs). This credits the appellant's influence on the processing of FOIA requests on an agencywide basis through such activities as the provision of technical advice and formal training and the periodic updating of [agency] instructions pertaining to the interpretation of FOIA as it relates to OIG records.

Level 5-4 is credited.

225 points

*Factor 6, Personal Contacts*

This factor includes face-to-face and telephone contacts with persons not in the supervisory chain. The relationship between Factors 6 and 7 presumes that the same contacts will be evaluated under both factors.

The appellant's personal contacts match Level 6-3 (the highest level described under this factor). At that level, in addition to contacts within the agency, the employee has contacts with claimants,

appellants, their attorneys, potential witnesses, and industry representatives in moderately unstructured settings. This credits the appellant's contacts with staff at various levels within the [agency] organization, and with individuals, attorneys, and court officials requesting information.

Level 6-3 is credited.

60 points

#### *Factor 7, Purpose of Contacts*

This factor covers the purpose of personal contacts ranging from factual exchange of information to situations involving significant or controversial issues and differing viewpoints and objectives.

The purpose of the appellant's contacts is consistent with Level 7-2. At that level, the purpose of contacts is to explain agency practices; plan and coordinate assignments requiring the cooperation of employees in several agency offices; or persuade other agency personnel with different viewpoints on the merits of releasing or withholding portions of documents requested under provisions of various acts. Correspondingly, the appellant's contacts are for such purposes as explaining what information is releasable to individuals requesting material under the FOIA, coordinating the assembly of materials, and advising other staff on proper redaction.

The position does not meet Level 7-3. At that level, the purpose of contacts is to motivate persons who may be fearful or uncooperative to testify in court or to provide information critical to a case; to gain voluntary compliance from persons who have divergent interests or objectives; to convince persons of the correctness of factual, technical, procedural, or other interpretations despite the existence of other differing interpretations and legal positions; or to otherwise influence skeptical or uncooperative persons by the use of tact, persuasiveness, and diplomacy in controversial legal situations. The appellant's work does not involve these types of contentious situations wherein she would have to personally argue the legal defensibility of her actions.

Level 7-2 is credited.

50 points

#### *Factor 8, Physical Demands*

This factor covers the requirements and physical demands placed on the employee by the work situation.

The position matches Level 8-1, which covers sedentary work.

Level 8-1 is credited.

5 points

#### *Factor 9, Work Environment*

This factor considers the risks and discomforts in the employee's physical surroundings or the nature of the work assigned and the safety regulations required.

The position matches Level 9-1, which describes a typical office environment.

Level 9-1 is credited.

5 points

*Summary*

<u>Factors</u>	<u>Level</u>	<u>Points</u>
Knowledge Required	1-7	1250
Supervisory Controls	2-4	450
Guidelines	3-3	275
Complexity	4-3	150
Scope and Effect	5-4	225
Personal Contacts	6-3	60
Purpose of Contacts	7-2	50
Physical Demands	8-1	5
Work Environment	9-1	<u>5</u>
Total		2470

The total of 2470 points falls within the GS-11 range (2355-2750) on the grade conversion table provided in the standard.

**Decision**

The appealed position is properly classified as GS-301-11, with the title at agency discretion.